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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,321	08/21/2001	Naoya Haneda	09792909-5138	8002

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EXAMINER

YIMAM, HARUN M

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/934,321	Applicant(s) HANEDA, NAOYA	
	Examiner Harun M. Yimam	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

Note to Applicant

Art Units 2611, 2614 and 2617 have changed to 2623. Please make all future correspondence indicate the new designation 2623.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 07/11/2006 have been fully considered but are moot in view of new grounds of rejection.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 8 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows.

Claim 8 defines "A recoding medium for recording a computer readable program" embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to

be realized"). The examiner suggests amending the claim to embody the program on "computer-readable medium" or equivalent in order to make the claim statutory. Any amendment to the claim should be commensurate with its corresponding disclosure.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 4, 7 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Tracton (6,470,378).

Considering claims 1, 4, 7, and 8, Tracton discloses an information processing system (100 Fig. 4), corresponding method and computer-readable program for distributing a content to another device (102 Fig. 4) via a network (104, 114, 116, Fig. 4) comprising:

first receiving unit (118 in Fig. 4) for receiving from said another device (102 Fig. 4), via said network, application information (application information 112 in figure 4) that

identifies an application via which said content can be accessed, content identifying information and format identifying information (column 4, lines 14-30);

reading unit (118 Fig. 4) for reading the content based on content identifying information included in the application information when the application information of the content is received by the first receiving means (the reading means is embedded in the receiving means column 5 lines 30-37);

format converting unit for converting the content read by the reading means into data in a predetermined format based on format identifying information included in the application information (column 5 lines 58-62); and

distributing unit for distributing the content, which is converted into the data in the predetermined format by the format converting means, to the device via the network (column 5 lines 60-61).

As for claim 4, Tracton discloses the format identifying information that includes information, which designates an encoding system and/or encoding rate of the content (the server scales content according to the clients network speed which means it alters the encoding rate to be client specific, column 5 lines 58-62).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 3, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tracton in view of Shan-Nazaroff (6,157,377).

With regards to claim 2, Tracton fails to specifically teach a second receiving unit for receiving transaction information of the content; authenticating unit for authenticating the transaction information when the transaction information of the content is received by the second receiving unit, wherein the reading means reads out the content based on a result authenticated by the authenticating means.

In an analogous art, Shah-Nazaroff discloses a second receiving (320 Fig. 3) unit for receiving transaction information of the content (column 5 lines 25-29); authenticating unit for authenticating the transaction information when the transaction information of the content is received by the second receiving unit, wherein the reading unit reads out the content based on a result authenticated by the authenticating unit (password, column 5 lines 13-20).

It would have been obvious to one of ordinary skill in the art to modify Tracton's system to include a second receiving means for receiving transaction information of the content and authenticating means for authenticating the transaction information when the transaction information of the content is received by the second receiving means, wherein the reading means reads out the content based on a result authenticated by the authenticating means, as taught by Shah-Nazaroff, for the benefit of allowing the system to keep track and securely and accurately bill user upgrade transactions.

Regarding claim 3, Tracton fails to specifically disclose a system wherein the transaction information includes a credit card number.

In an analogous art, Shah-Nazaroff discloses a system wherein the transaction information includes a credit card number (column 5 lines 25-27).

It would have been obvious to one of ordinary skill in the art to modify Tracton's system to include transaction information that includes a credit card number, as taught by Shah-Nazaroff, for the benefit of allowing the service provider to bill the users credit card.

Considering claim 5, Traction fails to specifically disclose calculating unit for calculating a use charge for the content based on the application information, which is received by the first receiving unit;

and accounting unit for accounting the use charge, which is calculated by the calculating unit, corresponding to the other device.

In an analogous art Shah-Nazaroff discloses unit for calculating a use charge for the content based on the application information which is received by the first receiving unit (the system bills upgrades which is additional content features such as stereo instead of Mono, HDTV instead of lower resolution TV, which means the system has the ability to calculate the amount to charge a user depending on the upgrades that he/she have selected, column 5 lines 25-28);

and accounting unit for accounting the use charge, which is calculated by the calculating unit, corresponding to the other device (client accounts, column 5 lines 25-28).

It would have been obvious to one of ordinary skill in the art to modify Tracton's system to include a unit for calculating a use charge for the content based on the application information which is received by the first receiving unit and accounting unit for accounting the use charge, which is calculated by the calculating unit, corresponding to the other device, as taught by Shah-Nazaroff, for the benefit of allowing the service

provider to keep accurate records of a large number and charge those users based on the amount of upgrades they elect to use.

As for claim 6, Tracton fails to specifically teach a detecting unit for detecting a busy status on the network, wherein the format converting unit converts the content into data in a predetermined format based on the busy status, which is detected by the detecting unit.

In an analogous art, Shah-Nazaroff discloses detecting unit for detecting a busy status on the network, wherein the format converting unit converts the content into data in a predetermined format based on the busy status which is detected by the detecting unit (the greater the number of users on the network, the lower the video quality the each subscriber receives from the broadcast network column 2 lines 30-38).

It would have been obvious to one of ordinary skill in the art to modify Tracton's system to include a detecting unit for detecting a busy status on the network, wherein the format converting unit converts the content into data in a predetermined format based on the busy status which is detected by the detecting unit, as taught by Shah-Nazaroff, for the benefit of making sure that there is enough available bandwidth on the network to support the broadcast streams being sent to the users.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harun M. Yimam whose telephone number is 571-272-7260. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 571-272-7294. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HMY


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